



ZIONSVILLE
FOR ALL THE RIGHT REASONS

**ZIONSVILLE TOWN COUNCIL
MEETING MINUTES
FOR
MONDAY, NOVEMBER 1, 2021
AT 7:00 P.M. EST
ONSITE MEETING
1100 West Oak Street**

This meeting was conducted onsite. All Councilors participated in person. The public attended via Zoom and in person.

Council Members Present: Josh Garrett, President; Jason Plunkett, Vice-President; Brad Burk, Alex Choi, Joe Culp, Craig Melton, and Bryan Traylor

Also Present: Adam Steuerwald, Town Council Attorney; Greg Guerrettaz, Financial Solutions Group; Amy Lacy, Municipal Relations Coordinator; Wayne DeLong, Director of Community and Economic Development, and other Town Department Staff.

1. OPENING

Garrett All right, we'll call this meeting to order. Please rise and join me for the Pledge of Allegiance.

All Pledge.

**2. APPROVAL OF THE MEMORANDUM OF THE OCTOBER 18, 2021
REGULAR MEETING (copy posted)**

Garrett All right. We have the approval of the memorandum of the October 18, 2021 regular meeting. A copy has been posted. Councilors, any questions on that? I'll make a motion to approve them.

Melton Second.

Garrett Second from Councilor Melton. All in favor?

All Aye.

Garrett Any opposed?
[No response.]

Garrett The memorandum of the October 18, 2021 regular Town Council meeting is approved by a vote of 6 in favor, 0 opposed.

3. REQUEST TO SPEAK ON AGENDA ITEM

Garrett I have some requests to speak here. As a reminder if your name is called, please come up. You have up to three minutes. I'll give you a one-minute warning. If you can give your address for the record and then I will start your time afterwards. First up, Mark Lee.

Lee I'm Mark Lee. I live at 2850 East 400 South, Lebanon and I want to speak to Sunbeam's proposed commitments. They are already in violation of Commitment #12 and their proposed Commitment #17. They have cut access off of 400 South and through that property already. That was done last Thursday. And, the other thing is the height of the berm. The neighbors had requested an 8-foot berm and the last planning meeting, Plan Commission meeting we were at, Plan Commission approved an 8-foot berm with trees on top of it. They're wanting to go with a 4-foot berm with a fence and plant trees on the north side of that berm. That's, uh, not going to stop the noise that an earthen berm would. And, those trees would be effectively 4 foot shorter by the time they get done with that. So, I would ask the Council to continue with the height of the berm. That's all I've got.

Garrett Very good. Thank you, Mr. Lee. Uh, next up, I've got Rick Lawrence but, Rick, I've got you speaking as the presenter so I'll just hold off on that but I've got you down. Next we've got Ken Stark to talk about Lennar's proposal.

Stark Good evening. Ken Stark. I live, I'm here representing myself and my wife. We live at 11920 East 200 South, Zionsville, Indiana. I'm here specifically speaking in opposition to the proposed Lennar development on East 200 South. 15 years ago, we moved from Fishers to a plot of land that we subdivided from my parents-in-law. When we went to get that exemption, the Council basically said, "This is exactly what we want to promote and encourage for the land use in the Zionsville area." So, we have lived in that home for 15 years off of 200 South. It's an idyllic AG/equine area and it's partly why people want to move to the Zionsville area. They don't want to live in a Fishers. They don't want to live in a Westfield. They love the balance between the Village and the rural area here in Zionsville. If you go down East 200 South at any point in time, you can find bicyclists, heavy bicycle traffic, you can find walkers, you can find people on horseback. The other thing I'd like to mention is we participated in the McKenna study which the Town of Zionsville commissioned and one takeaway from that work that they did was to protect the rural areas, right? Have development in the proper areas and support and promote the outlying rural areas. So, the Lennar development is not in keeping with the surrounding area dwellings. It would lower the property values of surrounding homeowners. It would introduce heavy traffic on East 200 South and probably 1200 South. There are no traffic fixtures or lights at 12—at Michigan Road to handle the volume of traffic that would be introduced by that Lennar development. The other thing I'd like to mention is that we left Fishers because of the rapid growth without the thoughtful infrastructure to support that growth. There's been no traffic study done for the last 10 years. So, I think building this proposed Lennar development would

introduce a lot of traffic and volume that we don't have the infrastructure to support. The planning committee and the staff issued an unfavorable recommendation on this proposed development. I think they recognized this isn't the type of development we want in this area in Zionsville and I would encourage you to also oppose it. Thank you.

Garrett Thank you, Mr. Stark. Next, we've got Debbie Davis.

Debbie Davis Yes. I'm up here to discuss the berm on 400 South. Across the street from the Sunbeam development. I just would like to re-emphasize the fact that the Plan Commission, everyone that night was in favor of the 8-foot berm. It started with, Chris Lake. As a matter of fact, Josh, my husband and I—

Garrett If you want to speak, make sure you speak at the, so you can be recorded, please.

Debbie Davis Pardon me?

Garrett You can talk at the —

Debbie Davis I just wanted, I just wanted to give you a copy.

Garrett If you want to speak, that's fine, that's fine.

Debbie Davis Okay.

Garrett So everyone can hear you including those online. Appreciate it.

Debbie Davis Okay. , Josh, I just wanted to give you a copy of the Zionsville Plan Commission meeting minutes. What my husband and I transcribed from each person when they were talking about the various commitments that they wanted to include, okay? Now, this is—it may not be perfect. You know, we sit at the typewriter and, you know, watched the YouTube video but if you go through there and you know, Chris Lake started out, you know, talking about the no construction traffic on the roads 300 East and 400 South and he wanted a commitment for that. He also wanted a commitment that the berm on 400 South to be increased to 8 foot with evergreen trees planted across, across the top. There's some more details, in the papers I gave you. And also, then on 300 East, he wanted to see an 8-foot berm. Then, also the last one was for Mr. Triscari, all the things or the last things that he wanted in his commitments. And, then, he went around, you know, to each and Sharon Walker, she was saying, you know, they're all hooked together and, then, Josh Fedor he agreed larger berm on the north side of the project. Cindy Madrick —

Garrett Thank you, Ms. Davis, your time is up.

Debbie Davis Okay.

Garrett Appreciate it.

Debbie Davis All right.

Garrett Thanks for coming up.

Debbie Davis Anyway, fair shot at having the value of homes protected.

Garrett Thank you, Ms. Davis, appreciate, thank you.

Debbie Davis All right. You get, you get what I'm saying. They all agreed.

Garrett We got you. We got you. Thanks, Ms. Davis.

Debbie Davis Thank you.

Garrett You're welcome.

Debbie Davis Thank you very much.

Councilor Choi Joined the meeting at this time.

Garrett Dan Davis?

Dan Davis My name is Dan Davis. I live at 3180 East 400 South, Lebanon. And, this is about that berm, too. The first I heard about this project they had decided to put a 12-foot berm with trees and a fence at Saratoga and they gave us on our side of the road no consideration whatsoever. And, we've been to several planning commission meetings and we finally got them all to agree in favor of the 8-foot berm with trees. I know that Sunbeam would probably like to put up a fence but out there we get pretty high winds. A fence probably wouldn't last long plus a fence isn't going to hold back the noise from the vehicles around the warehouse. The closest thing to our house when they build this thing, it's going to be right in front of our house will be the parking lot. So, we're going to have headlights pointed at our house constantly. The backup alarms are going to be going off constantly and it's going to really affect our quality of life out there. So, I hope you will support the Plan Commission on this and make sure we get an 8-foot berm with trees. Thank you for your time.

Garrett Thank you, Mr. Davis. Ah, Ralph Miller?

Miller Yeah, Ralph Miller, 4490 South 300 East. I'm the only one on the road on 300 East and ah, my house is facing where they're going to put this warehouse. And, the warehouse, the dock bays will be north and south, so these trucks will come in from 267 all day, all night and shine right into my house with a 4-foot berm. And they agreed, well, they talked last week, we'll get an 8-foot berm with trees planted on it. That's all I'm asking for is that you guys will get that 8-foot berm, something permanent because we get—I don't know if any of you live in the country but when you get a 40-mile-an-hour wind, you get a 40-mile-an-hour wind. There's no houses, neighborhoods blocking the wind. It will blow this fence over. When they blow this fence over in the wintertime, they will probably, who will I get to call? How many times are they going to fix it? When it blows over, when are they going to fix it come spring or "We'll fix it but it's going to be in the spring" so I've got all these lights. I've got diesel. I already smell the diesel exhaust now from the truck stop. So, you're going to have more trucks

constantly in and out of here with the diesel smell, the lights going into my house and, uh, Whitestown with the 80 acres right next to it, they gave us an 8-foot wall all the way around all three sides and it helps. It really does help. It's permanent. It's never going to blow away or go any place. And all I'm asking for is an 8-foot wall—I know I can't get like, I don't have the lawyers like Saratoga did, they have four houses, I'm one house. But, I just ask to get an 8-foot wall with the trees planted on it so I don't have to look at the headlights all the night long and the noise and I think that will block the noise a whole lot more than a wood fence. I'm asking you guys to think of us. I've been out there 35 years. I can't stop progress, you know, the ugly-looking warehouses coming up all over the place, I can't stop them. They're going to go all the way to Lebanon, I know that. But, I just—every place else I look where there's houses, they get an 8-foot wall. That's all I want is an 8-foot wall. They did it right next to us, on the exact same thing. Two warehouses, 8-foot wall. But, they didn't give me my trees so that's, you know, on my corner there, but they did give me an 8-foot wall, so they've said they'd give me 8-foot or they'd give me pine trees. I don't want a fence that's going to blow over and have to call. They tried this last week or whenever the meeting was, "Well, that's not or we didn't own that then." Well, that's the same thing I'm going to be fighting all this time if someone else buys this property and this fence blows over, "Well, we didn't own this then. That's their problem." You know, I don't want that problem. An 8-foot wall is permanent and we don't have any problems. They've already fixed the fence behind Saratoga. You know, it's already fell down, parts of it. So, I'm just asking you, please think about us having to look at the trucks all night long, the noise, the green/red lights flashing. You can hear them talking through an 8-foot wall but it's better than a little wood fence that's going to fall down. So, I'm asking you to please consider us and help us with an 8-foot wall and we'll get the 8-foot wall with the pine, with the trees. Thank you.

Garrett Thank you, Mr. Miller. Amy? Anyone else?

Lacy No, there are no others.

Garrett All right. Appreciate everyone who spoke tonight.

4. MAYOR/ADMINISTRATION UPDATE

Garrett Any Mayor administration update?

Lacy No update tonight.

Plunkett Amy, if we wanted an update from the administration, how do we request that? Specifically, at the last meeting, we were told about a strategic plan for the Fire Department, the Police Department staffing, the sustainability plan and I would just like to have an update on the estimated completion time and when we'd have that information at the next meeting.

Lacy You can request it through me and I can get it from them. Even if the Mayor can't be here, I can provide that information to you.

Plunkett Yeah, that would be great.

Lacy Okay.

Plunkett Thank you.

Garrett Thanks, Amy.

5. OLD BUSINESS

Garrett We have no old business.

6. NEW BUSINESS

**A. Consideration of the Review of Certification of Plan Commissions
Unfavorable Recommendation of Petition #2021-41-Z (Lennar Home of
Indiana LLC)**

Garrett New business, we've got a consideration of the review of certification of Plan Commission's unfavorable recommendation of petition #2021-41-Z, Lennar Homes of Indiana LLC. Wayne, do you have anything to say on this matter or should I turn it over to Mr. Lawrence? Mr. Lawrence?

Lawrence Thank you, Councilor. I appreciate your time this evening. For the record, my name is Fredric Lawrence. I'm an attorney with Nelson & Frankenberger with offices at 550 Congressional Boulevard in Carmel, Indiana. With me tonight is Ty Rinehart with Lennar. I have a short presentation if you would indulge me and then also note that we provided some revised commitments this afternoon. I realize it was at a very late date. We were trying to incorporate some comments we had received from Plan Commission meeting and then work with our engineers to come up with something that the Town Council would consider this evening before you tonight.

Just as a historical perspective, we presented at the Plan Commission meeting on October 18 a proposal for 119 acres to be rezoned to R3. The four parcels are noted up on the screen at the back of the room. Those provided for a site plan that show 278 homes in two distinct areas. What we heard at the Plan Commission was that there were concerns regarding density, concerns regarding traffic, concerns regarding proximity to the airport. We took those concerns and while at the Plan Commission, we tried to engage the Plan Commission to address some of them. That was not possible so we've worked over the past couple of weeks to come up with a different plan that we can provide to you based on the commitments that were passed out this evening, I believe. And, if you don't have a copy of those, I can pass out a hard copy if you would like to look at them.

Garrett Amy sent them to us, so--.

Lawrence In general,

Garrett Thank you.

- Lawrence In general, these revised commitments will limit the property that is associated with this project to the three eastern parcels shown here on the display on the back of the room. These two parcels right here are currently a golf practice range and this one is used for agricultural purposes. There is the Brookhaven and Fieldstone neighborhoods in this area that are zoned R2.
- Culp Hey, Joe, can we get it on this TV up here?
- Lawrence Sorry about that. So, in front of you are approximately 79 acres that this proposal would now consist of. We've dropped this 40-acre parcel here to the west. That—we're limiting the number of homes to 130 single-family homes. The ranch sizes would be a minimum of 2000 square feet. The two-story homes would be a minimum of 2400 square feet. No two-family dwellings will be permitted. This would be consistent with the R2 development standard which we believe is consistent with different areas, the development down in this area and also to some degree over on the other side, the west side of 421.
- Other changes we've made would be that all new detention facilities on the real estate would be dry detention which we heard concerns from the airport regarding previously shown wet detentions and we would attempt to convert this pond down here to dry detention if that was engineering feasible. We also heard concerns regarding the Hopwood Cellars parcel up here and homes potentially causing a concern. We would commit to no parcel show back to that—no homes show back to that parcel and we would also install a 4-foot mound along that south property line. We didn't change any of the commitments regarding the traffic impact analysis that have been done. Lennar still commits to making all improvements at the 421 entrance as required by INDOT and further improvements as would be warranted at the intersection of 200 South and 421. Those are all outlined in the commitments.
- We realize it was a late addition to the agenda tonight and we would respectfully ask for any comments and for consideration of these altered commitments and what this project would bring to Zionsville.
- Garrett Thank you, Mr. Lawrence. Councilors, questions for Mr. Lawrence or Wayne is here if you have a question there as well?
- Burk Yeah, quick question. Your amending this to 130 homes on the development site. What was it before?
- Lawrence 278.
- Burk You're going from 278 homes to 130 and part of that density is because you've eliminated the 40 acres that's directly south of the airport?
- Lawrence The airport is in this general area over here.
- Burk Okay.

- Lawrence The Union Woodlands is more directly south of that runway. This was the closest parcel to the airport and the Airport Comprehensive Plan that was being discussed in the Plan Commission currently.
- Burk Did, when you changed that a significant drop in density, did that change your strategy around lot sizes and home sizes or are you just making use of more common area, if that makes sense?
- Lawrence If I could have Ty Rinehart speak to that? He was more instrumental in that discussion.
- Rinehart Yeah. Ty Rhinehart with Lennar Homes, 11555 N. Meridian. The original plan, we had two different product types, uh, and the east parcel was the smaller homesites. The west area are the larger homesites. So, we're dropping the 40 acres that had the smaller homesites so that is affecting the density as well. And, the dry detention versus wet detention which takes up a lot more space so that's the reason the density has gone down quite a bit.
- Burk What are the plans for the other property then to the east? Is that just going to remain what it is or?
- Rinehart Yeah. We, we informed Mr. Covert today that we were probably going to have to offer to remove his parcel from the, from the plan. So.
- Burk So, his would remain—
- Rinehart Yes.
- Burk Ag.
- Traylor Is there any commitment to not come back, you know, from Lennar for that 40 acres?
- Rinehart We're removing it completely from our plan.
- Traylor No chance that you're ever going to come back with that 40 acres?
- Rinehart And suffer the same brain damage? No, we would not.
- Traylor Appreciate it.
- Garrett Anything else, Councilors?
- Melton Thank you, do these have three-car garages, two-car garages?
- Rinehart Yeah, this would be our cornerstone, what we call our cornerstone. It's somewhat similar to Vonterra. Vonterra is a little older, like 15 years in plans and the cornerstone is updated. But they have two-car standard in all or most of them have three-car options, yes. And, most of them have a three-car option but then additionally, a third car storage only if they only want the two-car garage.

Melton Thank you.

Burk Are those photos, are those the 2400 square feet?

Rinehart Yeah. Or a minimum of 2400. They'll go up to 3600. So, the average is probably going to be around 3000 square feet. If we were building these today at this location, the average is easily going to be over 500,000.

Burk Basement options here?

Garrett Yeah, that's how you get to 3600.

Garrett So, I don't, I don't really have a problem with a neighborhood there necessarily given the closeness to Fieldstone and I appreciate the changes you guys have made based on the feedback. I don't have an issue with the product, Lennar. My only issue is the process which is, you know, we have a planning commission, and a very good planning commission—I appreciate the work that they do and they sort of go through a process themselves which is oftentimes continued to sort of evolve these things, get public input and I take their recommendation very seriously. I don't want to get into the habit of them making a recommendation and then in between then and now, there are substantial changes—if it's a negative one to then have Council have to make that—I hate to say kneejerk reaction but to make a more uninformed reaction than the planning commission that, at least in my opinion, knows a lot more about this stuff than I do. So, it's my reason for not supporting it. It's nothing to do with your company or the location but it's really the process is where I have the issue. Just so you know how I am voting tonight and the reason why that vote would be coming.

Rinehart Well and, in consideration of that. We considered that, too. Very frequently when we come to Council here or any place else, we're making additional commitments on the fly essentially and we'll be asked for four or five things and they'll say, "Do you want to commit to that?" And, we'll say, "Yes." And, we'll make it a part of the record. So, we kind of preempted that in this case so it's not really that far out of the norm. We're just saying, hey, right up front, we know these things that we are going to commit to and we'll offer them now rather than you asking for them and then we say, "Yeah."

Garrett Yeah.

Rinehart So.

Garrett I appreciate that.

Burk Josh, in terms of that process, other than us voting is there a way for this to go back to the Plan Commission?

Culp That was my question.

Burk Or is that, is that dead in the water?

Garrett Well, I'll defer to Adam, but

- Steuerwald Or Wayne.
- Garrett Or Wayne. Sneaking up here.
- DeLong Good evening, Council. Certainly, as Mr. Garrett indicated, there is a process and certainly, as you articulated the words ‘substantial change,’ what you’re dealing with is a process where you have a job tonight of affirming or denying the recommendation that’s in front of you this evening from the Plan Commission. From there, this group would have the option to refer back to the Plan Commission, discuss the major substantial change that has been discussed tonight and the Plan Commission can then determine if that is the nexus, if you will, to allow the petition to be refiled in advance of the one-year moratorium for decision refile after an adverse decision. Certainly, your legal counsel, which I am not, can certainly speak to any other items or correct anything that I have said that’s out of line but in essence that, that is the process.
- Garrett Adam, anything that? Adam, Wayne knows his stuff but—
- Steuerwald So a negative or a vote to uphold the unfavorable recommendation, would that automatically start the one-year moratorium or you said they would have the chance to--
- DeLong The date of the adverse decision would be this evening if tonight is an adverse decision. And, then that one-year moratorium would start this evening.
- Burk So they could take it back. It would be a year.
- Traylor Well, if the Plan Commission allows it to come back before them because of substantial changes, they can override that one-year moratorium if they so choose.
- DeLong What’s important is your job this evening is to affirm or deny the, your Plan Commission’s recommendation to you.
- Garrett That makes sense.
- Traylor And, just as somebody that is super familiar with this area, this airport that’s right there, been involved in the strategic planning for the airport land use around the airport, this is taking a bad situation and making it worse if we were to put these houses here. It’s not, you know, we can’t undo that last development that we wish we could have but we can stop this one. So, that’s my two cents.
- Garrett Councilors, any other questions, comments?
- Burk The other question I had is that we heard from a previous citizen that there had not been a traffic study done, I believe, and you referenced that there was a traffic study. Was there a traffic study done recently?
- Lawrence There was a traffic study. You have to do one when you file a petition for over 150 lots. And, Lennar did do one. There were recommendations. We worked

with the Town and County and INDOT actually to come up with those recommendations that were included in the commitments. I think what perhaps the citizen was referring to is that there were no traffic stop signs or stoplights there now and that may be where he was going with that, but I'm not sure. But, we did do a traffic impact analysis.

Garrett Any other questions?

Traylor I would make a motion to affirm the Plan Commission's recommendation.

Garrett Any second on that?

Choi Second.

Garrett Second from Councilor Choi. Councilors, if you're voting yes, you're voting to deny the request from Lennar and agree with the unfavorable recommendation. All in favor?

All Aye.

Garrett Any opposed?
[No response.]

Garrett The motion is upheld, the unfavorable recommendation by a vote of 7 in favor, 0 opposed. Thanks guys, appreciate you coming out tonight.

Lawrence Thank you.

B. Consideration of Commitment Amendment Petition #2021-47-CA associated with Rezoning Petition #2019-52-Z (HUB Phase 2)

Garrett Next we've got a consideration of commitment amendment to petition #2021-47-CA associated with rezoning petition #2019-52-Z HUB Phase II. Mr Kern, I've got you listed or anyone who wants to come up really that's talking from the developer's standpoint. We've got a whole team.

Clark Thank you, Mr. President, members of the Council. For the record, my name is Murray Clark. I'm an attorney with the law firm, Faegre Drinker, 600 E. 96th Street in Indianapolis and I represent Sunbeam Development and its commitment modification matter before you. With me today, is Jamie Christman and Ken Kern from Sunbeam Development as well as Bryan Sheward from Kimley-Horn, Sunbeam's civil engineer.

Just a little background. Sunbeam bought the subject property earlier this year with the full knowledge and expectations of the 12 commitments associated with the original zoning of this site in 2019 in case #2019-52-Z. After acquiring these properties and commencing design and engineering, Sunbeam realized there were two problematic commitments. First, a portion of the buffer yard requirements in the site plan, uh, was impossible to accomplish because of the Duke Energy transmission line easement and the fact that Duke will not allow existing grades within the easement area to be increased or for trees to be placed within the

easement. Secondly, the Zionsville—through the TAC process, Zionsville Fire Department is requiring secondary gated and locked emergency access where none was contemplated in the original rezoning. Therefore, Sunbeam filed its modification—commitment modification case with respect to these two commitments. Those were commitments #9 and #12 to address what can be likened to be technical difficulties.

The Plan Commission as you have heard, heard this matter October 18 and certainly did address these two issues, these difficult issues that were brought by Sunbeam with its filing. But, there were eight additional commitments added by the Plan Commission. Commitments #13 through #16 were matters that were essentially raised by staff after review of the case. Those commitments were accepted by Sunbeam and I believe are completely acceptable tonight on the part of Sunbeam. The Plan Commission then did add four additional commitments essentially on its own motion after having heard from residents, some of whom you heard from tonight. Those were commitments #17 through #20. To be clear, Sunbeam—commitments #17, #19 and #20 are perfectly acceptable. We accept those tonight. And, I might add commitment #19 really addresses, I believe, Mr. Miller's comments before you. There is no request tonight to amend commitment #19 and commitment #19 I believe dealt with Mr. Miller's issue. So, the 8-foot berm on that portion in front of his property does remain.

But we'd respectfully ask you to focus on commitment #18. I think you've gotten an idea of what the issue is here. The original 2019 commitment required, indeed, a 4-foot berm just south of 400 South. The Plan Commission increased it to an 8-foot berm with evergreen trees planted along the top, 6 foot tall at installation. You will here if you will indulge us, Mr. President, you will hear that by doubling the size of the berm and in so doing significantly affecting the berm's slope, the result is very meaningful changes in development, changes in building size, changes in construction timing and schedules and changes in steel and other construction materials associated with construction delays. In recognition of these difficulties and in deference to the Plan Commission and to the residents who spoke at Plan Commission meeting and in order to get this project off the ground, we indeed would propose a compromise, specifically that the 4-foot berm height remain but Sunbeam would adhere to the planting the 6-foot tall evergreens, 6-foot at planting along the north face of the berm and a 4-foot fence on top of the berm. That, we believe is a reasonable compromise. To repeat, we are asking that you approve the actions of the Plan Commission with the one modification to commitment #18. With your indulgence, Mr. President, can I ask the civil engineer, Bryan Sheward to address?

Garrett That would be helpful, thank you.

Sheward Good evening. As he said, my name is Bryan Sheward. I'm with Kimley-Horn and Associates. Our offices are at 250 E. 96th Street, Suite 580 in Indianapolis. You did a great job explaining that. I think, to maybe elaborate slightly, to increase a 4-foot berm to an 8-foot berm increases the horizontal width bird's eye view down by 24 feet. If you look at the site line graphic that we provided, we don't have 24 feet between the berm and the north face of the building. So, if we were to increase that berm height by four feet in effect widening that berm south by 24 feet, we'd lose that north bay of the building which equates to about

28,000 square feet of the building which is a meaningful amount of area. I think it's worth noting that this square footage of this building is also smaller than when the property was rezoned, the site plan that accompanied that rezone just by nature of doing the design and getting more into the details, the building itself became slightly smaller than what was approved at the rezone which is also a part of the packet as well. That was a site plan prepared by Structurepoint and VanTrust. The location of the fence as noted, it would be a board-to-board. It wouldn't be shadowbox that you could see through it at an angle; it would be board-to-board. And, you can see we placed at the top section and this is a 1:1 ratio so you do have to look fairly close but the, the, a tractor trailer coming around the, what would be the upper kind of upper left which is the northeast because north is facing left on the screen, a combination of the berm and the fence would block headlights from a 4-foot height on a tractor trailer. Tractor-trailer heights are between three and four feet so we went with the higher level to be safe. And then the middle section cut is where the automobiles will come in and out or one of the ingress/egress points from the north parking area. That is as 3-foot headlight beam. You can see that that's actually hitting the berm but the 4-foot berm or the 4-foot fence, I'm sorry, on top also blocks that entirely and then site line C to the south, to the bottom, that's coming around what would be the northwest corner and these are section cuts through the surface in our design so they're very detailed and accurate. They're not diagrammatical but this is true section cuts through the surface. You can see that the fence blocks that 4-foot headlight beam coming around as well. The other red line that you see? If you pan back, thank you for zooming in, if you pan back, you can see that the homes at each one of those section cuts are between 2—approximately 200 feet, the homes vary as you move along 400 but it's at least 200 feet between the face of the homes and the berm or the proposed fence and nearly 300 feet between the north face of the building and the homes on the north side of 400 as well. So, several things showing there. But, in our assessment, a 4-foot berm with a 4-foot fence gains the same blockage of headlights and view as an 8-foot berm and that would be our request. I'd be happy to answer any questions that you have.

Garrett Councilors, questions you may have for Bryan or Murray?

Burk So, in 2019, is it 2019 when they first put these commitments in, is that correct?

Sheward That's correct.

Burk And, at that time, it was a 4-foot berm and a 4-foot fence?

Sheward No, just a 4-foot berm.

Burk In 2019?

Sheward And type H buffer yard if I could find which specific commitment number that was. So, yes, we had designed around the commitments that were made at the time Sunbeam bought the property and the rules at play when we started the design.

Burk So, you designed this with the understanding that you would have the 4-foot berm with probably trees on top of it?

- Sheward That's correct. That's correct.
- Burk And, then the Plan Commission decided to, they would prefer eight which would provide more protection—
- Sheward Correct.
- Burk But, that dramatically changes your, your plan, is that correct?
- Sheward Correct.
- Burk Is there any other way for you to, uh, move your plans in some way that would allow you to still keep that 28,000 square foot bay?
- Sheward Because of the Duke power line easement that was previously referenced on the south side of the site, there's really not space for us to shift everything to the south so we're pinched between the north and the south. Hopefully, that answers your question, but yeah.
- Burk Is there a picture of the whole area rather than just this side thing?
- Sheward In your Plan Commission materials, on the very last page, there's an overall site plan. I tried to note where the various commitments, because there were quite a few, apply.
- Garrett So, there were 12 commitments to start, sounds like #13 to #16 were the Town's requests so I appreciate that, #18 is the berm issue we're talking about here, #19 sounds like it's a berm on the east side that's not an issue.
- Sheward That's correct. For Mr. Miller, we increased it from a 4-foot berm to an 8-foot berm with evergreens on top so that's what the difference is.
- Garrett Got it. Just for my own edification, what are commitments #17 and #20 that also requested by the planning commission and you have agreed to?
- Sheward So, commitment #17 was that there wouldn't be any construction traffic utilizing 300 and 400 during construction and #20, was in effect an agreement between one property owner which is Mr. Triscari who lives—
- Garrett Got it.
- Sheward Yeah, that's where that actually on the screen right now is where that pond is located up at the top of the screen, he owns the corner lot that abuts the property on 400.
- Garrett Got it. One of the remonstrators mentioned the violation of #17. Is there construction traffic going on 400?
- Sheward Yeah, I would be happy to answer that. So, on Thursday, we had gotten a call from Janice at the Town, Stevanovic and she had said that they had been

contacted—I think it was a Plan Commission member had been contacted by a resident about some construction activity of some kind happening along 400. We promptly called the contractor who is actively doing legal drain reconstruction, offsite legal drain across the Clark property which is north which was approved by the Boone County Drainage Board approximately a month ago. So, they're working on offsite legal drain improvements and, it quite frankly was a mistake that the contractor in an effort to drop off some of the pipe that's being used for the replacement of the tile on the Nolan Legal Drain, had dumped some stone off the edge of 400 to in effect drop off material. We were contacted and within the hour, had a call with the contractor, Ken and Jamie and told them to cease all work. They cannot have access at all. So, admittedly a mistake; it won't happen again.

Garrett Got it. And, #12, there was also a mention of that being violated. I'm not sure what #12 was.

Sheward I think that--#12 was, was no curb cuts on 300 and 400, so yeah.

Garrett Are there going to be curb cuts on 300 and 400?

Sheward No, the only—well, as a matter of technicality, the emergency access for the Zionsville Fire Department.

Garrett Oh, right. But, that was the one requested in #13 and #16, right?

Sheward That's right.

Garrett Got it. Are the trees, the evergreen trees, the 6-foot evergreen trees on here, it looks like there is a significant number of them. How many are being planted specifically along 400?

Sheward I don't know the exact—it abides by the type H buffer which requires a certain amount of trees every hundred feet so we've met that standard within there and the addition of the fence does not reduce any trees. Everything is going to be crammed in there as well as the fence on the top. So.

Garrett And, are the trees on top of the berm, so it's 4-foot berm plus, call it 6 feet?

Sheward Within a foot of the edge. We have to make sure that –

Garrett So, 9 feet tall in total?

Sheward As the fence gets planted on top, the trees should be approximately on top or within a foot but we obviously can't plant the tree immediately next to the fence but as close as we possibly can next to that.

Garrett And, fences or trees, trees die, fences get blown over, whatever, something may happen to them. What's the process or what's the experience you guys have had in the past of, you know, resolving that. There was concern about, you know, a fence blows down and I'm looking at something for six months until it's fixed. Is, is that a reasonable concern? Is there –

- Kern I can address that. I'm Ken Kern with Sunbeam Development. Yes, fences have changed a lot over the last few years and with steel poles now that used to be all wood, we're able to put up fences that becomes very, very structurally sound. Unfortunately, we weren't a part of this development when the first fence went up in the first phase of this and we're having a few troubles with that fence. But, that will go away and it is our intent to put up—we are a long-term holder of properties and so, we don't want ongoing problems of any kind that like so it is our intent to put a first-class Absolute fence up and it will be there and will serve us well. Thank you.
- Garrett And my understanding of commitments are these are not sort of until the ribbon cutting. Commitments stay with the property for the life of the property. So, you can't take a fence down. If a fence falls down, it's your responsibility to replace it. If it's not replaced, the Town gets involved with ordinance violation. I just want to make sure that the public, I guess, is aware that that stays ongoing and is not just sort of a means to get an occupancy permit and then it's forgotten about.
- Burk According to your design, is, is 4 the most you can go? Obviously, 4 and 8 is a pretty big difference. I mean, did you look at 5? Did you look at 6 on the berm? Did you consider, or is 4 the –
- Kern The size of the fence or--?
- Burk No, no. On the berm.
- Kern The berm is part of your standards for that type of a—can you—
- Sheward Yeah, it's possible it could go a foot or something. We'd have to look at it. There's not a lot of space between the sidewalk on the north side of the building between the building face and the sidewalk, there's not a lot of space there, less than 10 feet so any kind of squishing of that, that would really be all we could gain and not –
- Burk I didn't know if you did an assessment, like, you know, 6 might be doable on top of the fence—I just didn't know if it was kind of maxed out at 4. I know it was illuminating the 24 feet that you lose to put up 8, right because you got the scale.
- Sheward Sure, no I—could it be increased by a foot? Possibly. We'd have to get into the weeds of looking at that but not a meaningful amount up to 8, I guess, is what I would offer.
- Burk I assume this was widely debated on the Commission with the 8-foot or was that more of a surprise to you or was that something that—
- Sheward It was after the conversation had ended, the public hearing portion had ended and Mr. Chris Lake had made a recommendation. We tried to speak up but it was in the midst of—there were quite a few different people including us trying to put a word in edgewise and we didn't get that opportunity. So, it was read through and what is listed in here in verbatim from the YouTube video that I had gotten so I

guess I would say it was after the negotiation portion of the Plan Commission hearing.

Garrett It's kind of unfortunate. I mean, I appreciate when developers come and are reasonable to try to find a solution. It's unfortunate that commitments are put on you without a chance to be a part of that conversation, quite frankly. I'm a little disappointed in that piece of that because you should have a chance to respond, talk through that. Some members may not realize that, hey 4 to 8 feet, that's only four feet but then realizing it's 24 feet of width. That's 30,000 square feet of assessed value. That's a big deal. How else do we solve for it? I appreciate you guys coming to us with a solution that I think is reasonable. The bays, the docking bays look like they're east/west so as a truck was backing in or backing out, the berm does not come into play. What about noise? This solution, trees, berm, fence versus just berm alone. Is there a sense of what is the difference there? Is there a difference there?

Sheward Well, I think you made a good point there, that on the—the docks are facing east and west on this building. Those are 4-foot recessed docks as well. The 4-foot height that we're referring to is from our north lead drive up four feet. In effect, you could say, that's 8 feet from the dock elevation on the sides of the building as well. Certainly, any additional material, fence, additional trees. We literally, I would say, cannot put additional landscaping on it without cannibalizing and killing itself but the addition of a fence would certainly help from the decibels of what you would hear. I can't tell you exactly what that reduction is but I'm sure it would help. But, I think, more meaningful that the docks are actually on the east and west sides of the building. That's the biggest thing and that's what the site plan with the rezoning had shown as well.

Garrett Councilors, any other questions? Given our budget we just passed, I'm appreciative of Sunbeam wanting to make this investment and I'm appreciative of the addition to what was originally a commitment of four feet to make it eight feet. I know it's not ideal from a neighborhood perspective but it is reasonable, I think. Any other questions on this councilors?

Plunkett How early on in the development process is the berm created, the trees put in and the fence put in?

Sheward So, practically speaking, the top soil will be stripped from the property as a matter of what they'd like to do. They wished they could already do that now. The detention pond which is located on the east side of Building 4 kind of up near Section AA, slightly to the plan north of that—those elements. The pond will be dug, the top soil stripped. Those berms could very easily be installed at the very beginning of the project as well as the 12-foot berm along Saratoga as well because they'll be looking to try to move the top soil out of the way and those berms will be entirely top soil just because trying to get rid of it, to be honest, with a big industrial building like this.

Plunkett Sure, thank you.

Garrett When you say, it can be, is it mostly likely to be following that script because you don't want—

- Sheward Yes.
- Garrett --to take dirt off just to bring dirt back, right?
- Sheward No, absolutely and, in fact, I think one of the commitments—I can't remember which number it was—had made a note that that 12-foot berm would be installed at the beginning of the project at the time of mass grading. Building the berm along the north side probably wouldn't be a concern because that's frankly what would be done as well.
- Melton Would you consider a taller fence at all? Would that help with any of the concerns of the concerned citizens? Is that an option? We're at four feet, you know, once I walked the top of the berm, I can see right over it. I understand these diagrams for the headlights. I feel like some sound does deaden by fences. I was just kind of googling sound-deadening fences and I came up with some other results but I'm just wondering if a 6-foot, standard 6-foot tall fence would be a compromise? Is that something you guys would be willing to do or is that--?
- Sheward Sure, as the consultant, I will defer to Sunbeam on that.
- Kern I guess when we look back or as we look at the project and try to keep it at a reasonable cost—I mean, the 4-foot fence in and of itself is about an 83 thousand dollar investment. So, I mean, it's not like small numbers to go another four feet or two feet on top of that to accomplish not—I mean, we've done the sight line studies. We can show that what we're trying to prevent is the headlight, you know, bleeding outside of our project and we think we've adequately dealt with that. I think the 4-foot berm with the trees, the thought there was that in the long run, the trees would grow and you'd have a nice, you'd have a nice screen and those still will happen but now we're adding that 4-foot of extra height to it. We show that it blocks the headlights and so we feel like we're, we've met with the neighbors, we've tried to be reactive to what their concerns are. We bought the property not assuming we were going to have to do these things but things change and so we want to be a part, we want to be a good neighbor.
- Melton Sure, sure. And, I think as we evolve with allowing certainly developments in areas, the Council, the Plan Commission, we need to be representative of the people that have elected us as well. So, I just, I just, what I'm hearing is that you're spending extra dollars—and we really appreciate that—but as we, as we go and we hear some of these complaints, you know, the residential homes were there first and I think we just have to respect that and kind of understand that we kind of want to help—I want to help both sides. I want to get you guys in and I'd love to have the assessed value but I also understand, you know, the residents that were there first. Is that something, can you go 6-foot just on the north side and maybe in front of the gentleman that's on the, I guess, on the west side?
- Sheward Just to clarify, Ralph Miller, Mr. Miller on the west side, that, there's no proposed fence on the west side. That berm has been increased from four foot to eight foot.

- Melton Fantastic. Well, that's great. Yeah. So, so, the majority of the homes that are surrounding this project right now is all across the north side?
- Kern Yes.
- Melton And, I guess my question is, would you increase that to six feet and be done? I think there's a little give and a little take, a little more from you guys which I really would appreciate. And, if, if not, we'll vote on it the way it is. Just the north side.
- Kern So, if, if, I'd like to ask the question, I guess, the extra two feet and the extra 40,000 dollars to do that would be for nothing because the lights are already blocked so there is no car light or truck light, so the question is, are we being better neighbors because we spend 40,000 dollars more to create, to add two feet to it. I, it just, you know, at some point, you try to reach out and do the right thing but at some point, does it make sense anymore so I guess I'd ask that question.
- Garrett Craig, what are you trying to get with two more feet? Like, I don't know that it would reduce the noise, it's not going to block any headlights, I don't think it's going to change any views. I just worry if we start piecemealing these developments that it may preclude other developers from coming because they may say, "Oh, Zionsville's finicky." You know, we start coming up with all these one-off standards.
- Melton We are finicky.
- Garrett Well, I know but we shouldn't be, right?
- Melton But, the reality is we're putting a 40-foot, how tall is the building? How tall is the building? We're putting a 40-foot building right across the street from ranch houses and I understand those ranch homes actually aren't even in our, they're not even in Zionsville so, you know, we can say, "Look, you're not in Zionsville." And I get that, I just don't think that's--. If there's a small give and take, I was trying to accommodate that. So, yes, I was trying to cut down on lights again—we've talked about that. We've talked about 8-foot tall—you're talking about the headlights but you also have lights that across the top of the trucks, you have, you know, the dieseling pipes that are, you know, well above 8 foot in height. Those are things that I'm just trying to see if there was a little bit of a benefit to the 6-foot tall on top of a 4-foot tall berm. We can't get 8 feet so we can stay on schedule. We can't get an 8-foot tall berm so we can stay on schedule but we can add two feet to a fence. That's what I was trying to—So, if you're not willing to commit to that, just tell us you're not willing to commit to that on the north side where all the residential homes are and we'll vote on it as presented.
- Choi I can just speak for myself and I'm okay with the explanation given with the 4-foot fence.
- Garrett Appreciate that, Councilor Choi.
- Choi Just to move that discussion along.

Garrett I don't hear a commitment so I'm going to assume there isn't one because that's a, that's an ask. Councilors, are there any questions, comments? All right, I'm going to make a motion to approve—

Steuerwald Can I get, make sure we are clear there was a, the commitments that were provided—

Garrett No, no, I'm going to –

Steuerwald You got it? Okay.

Garrett I think so, keep me honest here because I want to add it, #18. So, I'm going to make a motion to approve the consideration of commitment amendment petition #2021-47-7A, rezoning petition #2019-52-Z the HUB Phase II. However, my motion is to allow for the request to have the 4-foot berm and the 4-foot fence as opposed to the original commitment that we are seeing which is an 8-foot berm. You look like you're going to tell me I'm doing this wrong?

Steuerwald And, 6-foot trees.

Garrett And 6-foot trees?

Steuerwald Right.

Garrett And 6-foot trees. Is there a second to that one?

Choi Second.

Garrett Second from Councilor Choi. Amy, do want to roll call on this because I don't—

Lacy Sure. President Garrett?

Garrett Yes.

Lacy Vice-President Plunkett?

Plunkett Yes.

Lacy Councilor Burk?

Burk Yes.

Lacy Councilor Choi?

Choi Yes.

Lacy Councilor Culp?

Culp Yes.

Lacy Councilor Melton?

Melton No.

Lacy Councilor Traylor?

Traylor Yes.

Garrett Motion is approved 6 to 1. Thank you very much.

Kern Thank you for your attention.

Garrett Other matters.

Daisy Davis (from audience) Shame on you Zionsville.

Garrett No, no, no. You can leave but you're not going to talk. If you're going to talk, you can leave.

Daisy Davis (from audience) I'm leaving.

Garrett Okay, thank you.

Daisy Davis Shame on you.

Garrett (from Audience) Okay, thank you. Moving to other matters—

Daisy Davis (from audience) Whitestown treats people out there better than Zionsville.

Garrett Appreciate you stopping by. Okay, I'll wait on other matters because I don't want this to be overshadowed by rude people.

Daisy Davis (from audience) Don't really expect it in Zionsville.

7. OTHER MATTERS

Garrett Moving on to other matters, I would like to give a big congratulations to our new captain, Drake Sterling who got promoted last Thursday for his good work in ZPD. I know he's not here today but good work, Captain.

8. APPROVAL OF CLAIMS

Garrett We got claims. Anyone got questions on claims? I'll make a motion to approve claims.

Plunkett Second.

Garrett Second from Vice-President Plunkett. All in favor?

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All Aye.

Garrett All opposed?
[No response.]

Garrett Claims are approved by a vote of 7 in favor, 0 opposed.

9. ADJOURN

Garrett I will make a motion to adjourn.

Culp Second.

Garrett Second from Councilor Culp. I heard him first. All in favor?

All Aye.

Garrett All opposed?
[No response.]

Garrett Motion to adjourn is approved by a vote of 7 in favor, 0 opposed. The next regular Town Council meeting is scheduled for Monday, November 15, 2021 at 7:30 a.m. in the Zionsville Town Hall council chambers. Final notice will be posted in compliance with Open Door Law. Thank you much.

Respectfully Submitted.

Amelia Anne Lacy, Municipal Relations Coordinator
Town of Zionsville